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10/054,145	01/22/2002	James W. Yonker	J-3315	5120

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S.C. JOHNSON & SON, INC.  
1525 HOWE STREET  
RACINE, WI 53403-2236

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 03/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No. 054145	Applicant(s) YONTER et al
Examiner Neri Leroy	Group Art Unit 1616

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 4/29/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-13 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-13 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear as to the means and / or intention of the 2 position cover-is one position off the base, the 2<sup>nd</sup> on?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United

States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 7, 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Roop-416951.

A packaged animal poison, the package, fig 1, a housing, with cover 4, removably mounted with hooks, 5, to permit examination of the poison bait mix placed in the internal cavity. Feed constitutes bait (fig 2; with poison (9) affixed to the lid (fig 2, 3). The package is of cellulosic material, wood, as clearly wood screws (fig 4) are used to affix the poison, and plastics were not get in use. The attractant chicken feed, is well known as a Murine animal attractant.

Claims 1, 2, 4-6, 8-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelson et al. 5806237.

Nelson provides the instant package (fig 1, 2) as a rodent bait station (col.2, lines 57-61) with bait in an internal cavity, with a base, lid, removable, and latch (col.3, lines 3-18) with alignment (fig.1, 110) member constituting the instant handles fig. 2 shows the open lid position, cup shaped, flat base, lateral walls. Ecolab Rat and Mouse exterminator (col. 6, lines 35-43) constitutes the poison bait mix.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. 5806237 and Baker 5720951. Nelson (above) provides the instenil

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invention as claimed, but the bait, poison and bittering agent are not recited, except as the Ecolab bait?

Baker shows an alternative Bait, useful as any bait can be inserted in Nelsons' tray. Baker teaches food bait (col.3, top) (col.4, top) warfarin type slow acting poison (col.4, lines 20-36) and wax binder (col.2, lines 59—60) with deterrents denta to nuisu berzoate (col.5, lines 16-21). The blocks are gnawable (col.1, lines 45-48). They are placed in bait station (col.5, lines 36-43).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a safe, effective Mouse house, to use Nelsons' with bait of choice, shown effective by Baker, to enhance attraction, consumption and death of Mouse, while providing child safety. Baker includes cellulosic ingredients thus part of the packaged animal poison.

The selection of each ingredient and form thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

Claims 3, 7, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson and Baker as applied to claims 1, 2 above, and further in view of Marshall et al. 5449514 01, Jack et al. 5044113

The instant invention is shown by Nelson / Baker but the package is plastic. Marshall, however show, as does Stack (figure) bait blocks inclusive of cellulosic materials, to be gnawed by rodents. Marshall uses what/ corn, (col.3, lines 3-13) with

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the paraffin wax and rodenticides also of Baker. The b corp needs sewing. Stack also shows Mice/rats chew, and baits designed to be chewed are desirable, thus obvious to incorporate into a bait to enhance Rat acceptance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4556 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd  
March 20, 2003



NEIL S. LEVY  
PRIMARY EXAMINER